

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

RICHARD B. FISCHER,

Plaintiff,

vs.

J. SAM STEWARD, Individually and as
former Sergeant with Missouri State
Highway Patrol

and

THE CITY OF ST. CHARLES

and

TIMOTHY SWOPE, Individually and as
former Chief of Police St. Charles
City Police Department

and

JAMES GOOCH, Individually and as
former Chief of Police St. Charles
City Police Department

and

ROBERT BOERDING, Individually and
in his capacity as Major, St. Charles City
Police Department

and

RACHEL A. SMITH, Individually and
in her official capacity as
former Special Prosecutor for the St. Charles
County Prosecuting Attorney

Defendants.

No. 4:07-CV-1798

JURY TRIAL DEMANDED

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION TO EXTEND TIME TO
RESPOND TO DEFENDANTS' MOTIONS TO DISMISS AND FOR SUMMARY
JUDGMENT**

Comes now Plaintiff, by and through his attorneys Daniel P. Finney, Jr., and Neil J. Bruntrager, pursuant to Fed. R. Civ. P. 6(b)(1)(A), requests this Court to enter an order to extend time to respond to Defendant's motions for 30 days for good cause from this date, or such time as Court deems reasonable under the circumstances.

INTRODUCTION

1. Plaintiff is Richard Fischer. Defendants are J. Sam Steward, City of St. Charles, Timothy Swope, James Gooch, Robert Boerding, and Rachel Smith.
2. Plaintiff sued defendants for violation of civil rights under 42 U.S.C. § 1983, malicious prosecution, and intentional infliction of emotional distress.
3. Depositions of Defendant J. Sam Steward and Defendant Rachel Smith were not completed until June 2, 2009, after Plaintiff sought and received a Court order requiring both Defendants to provide answers to lines of questioning which they had previously declined to answer without such an order. Likewise, evidence concerning the claims against all other defendants was not uncovered until Plaintiff sought and received a court order from the Presiding Judge in the 11th circuit allowing for the release of all the documents in the possession of the City of St. Charles after this lawsuit was filed.
4. Discovery was closed on June 5, 2009.

5. Per Court order, Defendants were granted leave to file dispositive motions no later than June 15, 2009. Plaintiff was given twenty days from the filing of their motions to respond. Defendants were given 5 days to file a response.
6. Defendant Rachel Smith filed a motion for summary judgment and for dismissal on June 15, 2009.
7. St. Charles Defendants filed a motion for summary judgment and dismissal for on June 15, 2009.
8. Defendant Sam Steward filed a motion for summary judgment on June 15, 2009.
9. Defendants all electronically filed motions and supporting document with the court under seal. Plaintiff was unable to access the motions and the supporting documents from the Court because they were filed under seal.
10. Defendant Rachel Smith and Defendant City of St. Charles served Plaintiff with electronic copies of motions and supporting documents on June 15, 2009.
11. Due to a clerical error, Defendant Sam Steward did not serve Plaintiff with his motion for summary judgment and supporting documents until June 23, 2009.
12. Defendant Rachel Smith had filed a motion for summary judgment on November 30, 2007.
13. Defendant Rachel Smith's first motion for summary judgment was denied on April 14, 2008. Defendant was granted leave to refile. Plaintiff was allowed to proceed with reasonable discovery.
14. None of the defendants had previously filed any dispositive motions.

ARGUMENT

15. Good cause exists to grant Plaintiff an extension of time to file a response to the dispositive motions filed by Defendants in that Plaintiff did not receive all the Defendant's motions for summary judgment until June 23, 2009.
16. Defendants' motions interrelate, and a response to one cannot effectively and practically be given without full consideration of all Defendants' asserted facts and claims for relief.
17. In their respective motions, Defendants rely on extensive lists of uncontroverted facts, many of which did not come to light until after court orders were entered in effect compelling the disclosure of such evidence.
18. The latest evidence only came to light on June 2, 2009, after this Court ordered Defendants Smith and Steward to answer lines of questioning in the course of their depositions held during discovery which they had previously declined answer.
19. Plaintiff has acted in due diligence and without delay in asking this Court for a continuance, given the new facts and circumstances. Plaintiff brings his motion for an extension of time one day after receiving the last dispositive motion from the defendants, which was not served, albeit due to an honest clerical mistake, until 8 days after it was filed.
20. In sum, Plaintiff, acting without delay, and for good cause shown, requests this Court allow an extension of time to respond to Defendant's dispositive

motions filed on June 15, 2009 for 30 days from today, or such time as Court deems necessary and reasonable under the circumstances.

Dated St. Louis, Missouri
June 24, 2009

Respectfully submitted,

By /s/ Daniel P. Finney, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon all counsel of record by electronic means on the 24th day of June, 2009:

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By /s/ Daniel P. Finney, Jr.

